

04-AP-B



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SECRETARY
COMMITTEE OF RULES OF
PRACTICE & PROCEDURE
ADMINISTRATIVE OFFICE OF
THE U.S. COURTS
WASHINGTON, DC 20544

APRIL 4, 2004

DEAR MR. SECRETARY:

PURSUANT TO PART I, PARAGRAPH 2 OF
THE "PROCEDURES FOR THE CONDUCT OF BUSINESS BY THE
JUDICIAL CONFERENCE COMMITTEES ON RULES OF PRACTICE
AND PROCEDURE", I'D LIKE TO MAKE A SUGGESTION/
RECOMMENDATION REGARDING THE FEDERAL RULES OF
APPELLATE PROCEDURE.

RULE 12 (b), F.R. APP. P., REQUIRES "THE ATTORNEY
WHO FILED THE NOTICE OF APPEAL MUST, WITHIN 10 DAYS
AFTER FILING THE NOTICE, FILE A STATEMENT WITH THE
CIRCUIT CLERK NAMING THE PARTIES THAT THE ATTORNEY
REPRESENTS ON APPEAL."

THE RULE SHOULD BE CLARIFIED.

I FILED A NOTICE OF APPEAL TODAY - APRIL 4, 2004 - WITH THE U.S. DISTRICT COURT, DISTRICT OF NEW HAMPSHIRE. UNDER THE RULE, I HAVE UNTIL APRIL 14, 2004 TO FILE THE REPRESENTATION STATEMENT. I WILL NOW SEND THE FIRST CIRCUIT THEIR "DOCKETING STATEMENT" FORM WHICH THEY REQUIRE TO COMPLY WITH RULE 12 (b).

OBVIOUSLY, THE FIRST CIRCUIT CLERK WILL NOT HAVE A CASE PENDING AS THE DISTRICT COURT WILL NOT HAVE FORWARDED ANYTHING AT THAT TIME, SO THEY WON'T BE ABLE TO FILE IT.

THE RULE SHOULD BE CLARIFIED SOMEHOW IN CONJUNCTION WITH RULE 3 (d), F.R. App. P. WHICH REQUIRES THE DISTRICT COURT CLERK TO "PROMPTLY SEND A COPY OF THE NOTICE OF APPEAL ... TO THE CLERK OF THE COURT OF APPEALS...". AN INDIVIDUAL SHOULD EITHER BE NOTIFIED UNDER RULE 3 (d) THAT THE NOA HAS BEEN SENT TO THE COURT OF APPEALS AND THEN HAVE 10 DAYS FROM THAT SERVICE TO SEND THE 12 (b) STATEMENT. OR, UPON RECEIPT OF THE NOA, THE CIRCUIT CLERK SHOULD DOCKET THE APPEAL AND SO NOTIFY THE INDIVIDUAL PARTIES OF SUCH; 10 DAYS AFTER SERVICE OF THE NOTICE OF DOCKETING THE 12 (b) STATEMENT SHOULD BE DUE.

AS IT STANDS NOW, I'M FILING A STATEMENT WITH THE CIRCUIT CLERK, FOR A CASE THAT DOES NOT EXIST IN THAT COURT WHEN RECEIVED.

THE COMMITTEE SHOULD CONSIDER A CLARIFICATION OF THE RULE.

SINCERELY,

A stylized handwritten signature consisting of several overlapping loops and curves.

DENNIS R. COOKISH